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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,264	06/24/2003	Todd A. McGarvey	5003073-016US2	1410
29737	7590	06/16/2005	EXAMINER	
SMITH MOORE LLP P.O. BOX 21927 GREENSBORO, NC 27420			BARRY, CHESTER T	
			ART UNIT	PAPER NUMBER
			1724	
DATE MAILED: 06/16/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/602,264

Applicant(s)

MCGARVEY ET AL.

Examiner

Chester T. Barry

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 8, 11 and 13 is/are rejected.
- 7) ☐ Claim(s) 9, 10 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

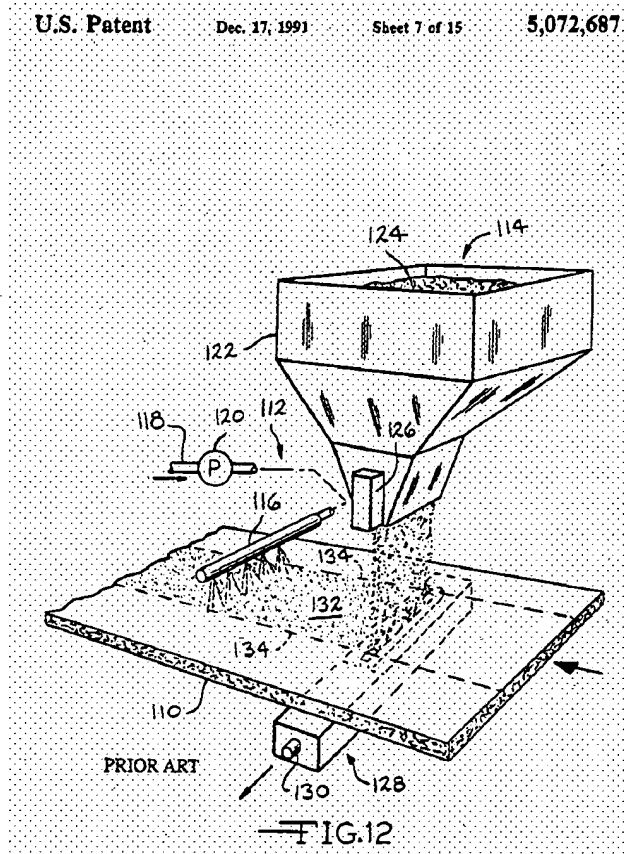
- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/24/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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The election made without traverse is noted.

Claim 8 is rejected under 35 USC Sec. 102(b) as anticipated by USP 5072687 to Mitchell. Mitchell (Fig 12 and col 12 line 32+ describes a column 122 having a substantially square inlet at the top and a substantially rectangular outlet at the bottom. The hopper contains a bed of super absorbent particulate material 124. The phrase "for separating water from a water/oil emulsion" was very carefully considered in the course of construing the claim. It was determined that the phrase states a mere intended use of the claimed apparatus and therefore does not structural limit the scope of the apparatus. For example, the apparatus is not claimed as one which contains a water/oil emulsion, or water separated from a water/oil emulsion in physical contact with the SAP (super absorbent polymer). Furthermore, The phrase "for passing said water/oil emulsion through the bed" was also very carefully considered in the course of construing the claim. It was determined that the phrase states a mere intended use of the inlet and outlet recited in the claimed apparatus and therefore does not structural limit the scope of the apparatus to one having a water/oil emulsion therewithin. It is noted, however, that the inlet and outlet appear to be capable of admitting and

discharging, respectively, a water / oil emulsion.



Claims 9 – 10 require that the apparatus be of the kind that has a water/oil emulsion upflowing through the same. Mitchell does not suggest flowing a water/oil emulsion upwardly through the bed of SAP in the column.

Claim 11 is rejected under 35 USC Sec. 103(a) as obvious over Mitchell in view of Mullennix. Mitchell describes a “deposition rate control means” at 126, but does not specifically describe an auger. USP 6428701 to Mullennix describes an adjustable-rate powder dispensing apparatus comprising an auger. It would have been obvious to have

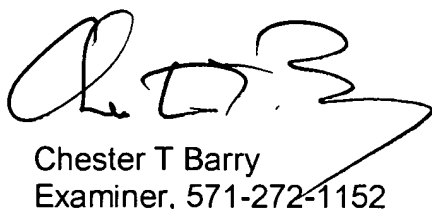
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selected any known particulate material feeding or dispensing device for use as the "deposition rate control means," such as the auger shown by Mullennix.

USP 4857065 to Seal is cited for its disclosure of a fluidized bed apparatus containing particulate material the likes of which are coated with a super absorbing polymeric material. The fluidized bed apparatus inherently describes a column within which the bed is confined. Per claim 12, it is unclear whether particles are fed through an inlet and discharged through a separate outlet, or whether feed and discharge is through the same opening. Moreover, an inlet below the outlet is not described.

Claims 9 – 10, 12 are objected to as being dependent on a rejected base claim, but would be allowed if presented in independent form.

Claim 13 is rejected under 35 USC Sec. 112, 2<sup>nd</sup> paragraph, for failing to particularly point out and distinctly claim the invention. It is unclear whether the inlet and outlet for admitting and discharging, respectively, the water/oil emulsion could be the very same inlet for admitting and discharging the granules. Correction is required.



Chester T Barry  
Examiner, 571-272-1152